

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MAULIKKUMAR BHARATBHAI PATEL,

Petitioner,

v.

20-CV-01131-LJV
ORDER

WILLIAM P BARR, *et al.*,

Respondents.

The petitioner, Maulikkumar Bharatbhai Patel, is a civil immigration detainee currently held at the Buffalo Federal Detention Facility. He seeks relief under 28 U.S.C. § 2241, claiming that his continued detention in U.S. Immigration and Customs Enforcement custody, pending removal, violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Docket Item 1. The petitioner has paid the \$5.00 filing fee.

Patel also has moved for an order “staying [his] removal . . . during the pendency of this habeas.” Docket Item 1 at 10. That motion is denied without prejudice to refiling. The Real ID Act of 2005, 8 U.S.C. § 1252, strips district courts of jurisdiction to review a final order of deportation. See *De Ping Wang v. Dep’t of Homeland Sec.*, 484 F.3d 615, 615-16 (2d Cir. 2007). As a consequence, except under narrow circumstances district courts “have no jurisdiction to review requests for stays of removal.” *Al-Garidi v. Holder*, No. 09-CV-6160L, 2009 WL 1439216, at *1 (W.D.N.Y. May 15, 2009). Patel does not advance the basis for his motion, so this Court cannot find that any of the fact-specific exceptions apply. He may renew his motion, however, to articulate an exception.

ORDER

IT IS HEREBY ORDERED that Patel's motion for a stay of removal is DENIED; and it is further

ORDERED that within **45 days of the date of this order**, the respondents shall file and serve an **answer** responding to the allegations in the petition; and it is further

ORDERED that within **45 days of the date of this order**, the respondents shall file and serve, in addition to their answer, a **memorandum of law** addressing each of the issues raised in the petition and including citations to supporting authority and applicable sections of the Immigration and Nationality Act; and it is further

ORDERED that within **45 days of the date of this order**, instead of their answer, the respondents may file a **motion to dismiss** the petition, accompanied by appropriate exhibits, demonstrating that an answer to the petition is unnecessary; and it is further

ORDERED that the petitioner shall have **25 days after his receipt of the respondents' answer or motion to dismiss** to file a written reply; and it is further

ORDERED that the Clerk of Court shall serve a copy of the petition, together with a copy of this order, electronically via a notice of electronic filing to the United States Attorney's Office, Western District of New York, at USANYW-Immigration-Habeas@usdoj.gov.

SO ORDERED.

Dated: August 28, 2020
Buffalo, New York

/s/ Lawrence J. Vilardo

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE